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8 REY MOBILE HOME ESTATES

9 UNITED STATES BANKRUPTCY COURT
10 CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

11 In re

12 JAMIE LYNN GALLIAN,
13 Debtor.

Case No. 8:21-bk-11710-SC

Chapter 7

JOINDER IN SUPPORT OF CHAPTER 7
TRUSTEE'S NOTICE OF MOTION AND
MOTION FOR ORDER COMPELLING
DEBTOR AND ANY OTHER OCCUPANTS
TO VACATE AND TURN OVER
MANUFACTURED HOME AND
AUTHORIZING ISSUANCE OF WRIT OF
ASSISTANCE

Date: March 4, 2025
Time: 11:00 a.m.
Ctvm: 5C

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20 TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY JUDGE,
21 THE DEBTOR, AND ALL INTERESTED PARTIES:

22 Houser Bros. Co., dba Rancho Del Rey Mobile Home Estates ("Houser Bros.") hereby joins
23 the Chapter 7 Trustee, Jeffrey I. Golden's Motion for Order Compelling Debtor and Any Other
24 Occupants to Vacate and Turn Over Manufactured Home and Authorizing Issuance of Writ of
25 Assistance, filed on January 31, 2025, as Dk. No. 538 ("Motion"), and fully incorporates the
26 Trustee's arguments as fully set forth therein.

27 On October 29, 2024, the Court entered its Order re: Motion to Avoid Lien under 11 U.S.C.
28 § 522(f) as Dk. No. 488. A true and correct copy of the Order is attached as Exhibit "1." In the

1 Order, the Court notes that the Trustee is authorized to sell the Debtor's mobilehome to realize the
2 benefit of the avoided, recovered, and preserved liens she voluntarily placed against the property:

3 Preliminarily, the Court notes that Debtor's actions suggest a lack of
4 understanding regarding the impact of her actions prior to and throughout this
5 case. Debtor engaged in a series of transfers regarding her homesteaded property
6 prior to her bankruptcy filing, all of which, as detailed below, Trustee avoided,
7 recovered, and preserved for the benefit of the Estate. Despite the foregoing,
8 Debtor argues that the existence of her homestead prevents Trustee from selling
9 her property. Debtor has repeatedly raised her homestead in various pleadings and
10 in her arguments at various hearings, clearly not understanding that its existence
11 is separate from whether the property can be sold, as was previously explained to
12 Debtor. Debtor's homestead is not disputed or contested and cannot be, as it has
13 been affirmed on appeal. As explained below, Debtor's homestead, however, does
14 not prevent Trustee from administering the lien preserved for the benefit of the
15 Estate.

16 Order, p. 1, l. 27 to p. 2, l. 10.

17 For the reasons already set forth in its Order, the Trustee can and should sell the Property to
18 realize the benefit of the avoided, recovered, and preserved liens. Under Section 542, any party in
19 possession of property that a trustee may use, sell, or lease must turn over such property to the
20 Trustee. To consummate any sale, the Trustee will need to deliver possession to the successful

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1 buyer. Houser Bros. thus respectfully requests that the Court grant the Trustee's motion and order
2 the Debtor to vacate and turn over possession.

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5 DATED: February 13, 2025

MARSHACK HAYS WOOD LLP

6 */s/ D. Edward Hays*

7 By: _____

D. EDWARD HAYS
BRADFORD N. BARNHARDT
Attorneys for Creditor,
HOUSER BROS. CO. dba RANCHO DEL
REY MOBILE HOME ESTATES

EXHIBIT 1



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re:

Jamie Lynn Gallian,

Debtor(s).

Case No.: 8:21-bk-11710-SC

CHAPTER 7

**ORDER RE: MOTION TO AVOID LIEN
UNDER 11 U.S.C. § 522(f) [DK. 422] AND
VACATING HEARING**

Vacated Hearing:

Date: November 5, 2024

Time: 11:00 AM

Courtroom: 5C

Having reviewed the Motion to Avoid Lien Under U.S.C. § 522(f) filed August 29, 2024 [Dk. 422] ("Motion"), the docket as a whole, and finding that this matter is appropriate for disposition without a hearing, for the reasons stated below, the Court finds good cause to enter this order denying the Motion and vacating the November 5, 2024, hearing.

I. Prefatory Statement

Preliminarily, the Court notes that Debtor's actions suggest a lack of understanding regarding the impact of her actions prior to and throughout this case.

1 Debtor engaged in a series of transfers regarding her homesteaded property prior to her
2 bankruptcy filing, all of which, as detailed below, Trustee avoided, recovered, and
3 preserved for the benefit of the Estate. Despite the foregoing, Debtor argues that the
4 existence of her homestead prevents Trustee from selling her property. Debtor has
5 repeatedly raised her homestead in various pleadings and in her arguments at various
6 hearings, clearly not understanding that its existence is separate from whether the
7 property can be sold, as was previously explained to Debtor. Debtor's homestead is not
8 disputed or contested and cannot be, as it has been affirmed on appeal. As explained
9 below, Debtor's homestead, however, does not prevent Trustee from administering the
10 lien preserved for the benefit of the Estate.

11 The Court strongly encourages Debtor to take advantage of the Court's pro bono
12 clinics or to seek advice from another pro bono or low-cost legal provider for guidance.

13 **II. Procedural Background Relevant to the Motion**

14 On August 27, 2024, Jamie Lynn Gallian ("Debtor") filed a Motion to Avoid Lien
15 Under 11 U.S.C. § 522(f) [Dk. 422] ("Motion") along with a Notice of Opportunity to
16 Request a Hearing on Motion [Dk. 423]. The Motion seeks to avoid the lien of "J-Pad,
17 LLC; Jeffrey Golden, Ch7 Trustee" and relates to Debtor's property located at 1622
18 Monterey Lane, Space 376, Huntington Beach, CA 92649 (the "Property") [Dk. 422,
19 ¶¶7, 10].

20 On September 10, 2024, Jeffrey I. Golden, the Chapter 7 trustee ("Trustee") filed
21 an Objection to and Request for Hearing on Motion [Dk. 437] ("Objection").¹ The
22 Objection expressly requested a hearing on the Motion pursuant to LBR 9013-
23 1(o)(1)(A)(ii). As Trustee filed a request for a hearing, Debtor was required to schedule
24 and give notice of a hearing on the Motion on or before September 24, 2024, per LBR
25 9013-1(o)(4). However, Debtor failed to do so and on October 14, 2024, Trustee filed
26 the Declaration of Eric P. Israel in support of an order denying the Motion [Dk. 465]. The
27

28 ¹ On September 10, 2024, Debtor filed a Declaration That No Party Requested a Hearing on Motion [Dk. 436]; however, the declaration was premature as the deadline to file an objection and request for hearing was September 13, 2024, per Local Bankruptcy Rule 9013-1(o).

1 Court, on October 22, 2024, entered an Order Denying Debtor's Motion for failure to
2 timely schedule or give notice of any hearing [Dk. 474] ("Order Denying Debtor's
3 Motion").² The approval of this order, however, apparently crossed paths with Debtor's
4 untimely filing of a notice setting the matter for hearing. The Court thereafter placed the
5 matter on calendar.

6 The Court, considering the foregoing and the docket as a whole, finds good
7 cause to supplement its prior order and deny the Motion, as set forth herein.

8 III. Legal Standards

9 The Motion seeks to avoid a lien under 11 U.S.C. § 522(f). To avoid a lien under
10 § 522(f), a debtor must show: (1) that they have an interest in the homestead property;
11 (2) they are entitled to a homestead exemption; (3) the asserted lien impairs that
12 exemption; and (4) the lien is a judicial lien. See *In re Morgan*, 149 B.R. 147, 151 (9th
13 Cir. BAP 1993); *In re Coy*, 552 B.R. 199, 202 (Bankr. C.D. Cal. 2016). The burden is on
14 Debtor, as movant. *Id.*

15 As noted, § 522(f)(1) allows a debtor to avoid "the fixing of a lien on an interest of
16 the debtor in property . . . if such lien is . . . a Judicial lien . . . or a nonpossessory,
17 nonpurchase-money security interest in any . . ." Section 101(36) of the Bankruptcy
18 Code defines a judicial lien as a "lien obtained by judgment, levy, sequestration, or other
19 legal or equitable process or proceeding." Section 522(f), however, cannot be used to
20 avoid consensual liens. *Polk v. Cty. of Contra Costa*, 2014 U.S. Dist. LEXIS 111713, at
21 *21 (E.D. Cal. Aug. 11, 2014); *Huff v. Huff (In re Huff)*, 2019 Bankr. LEXIS 233, at *5
22 (Bankr. E.D. Wash. 2019).

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26 ² Debtor's notice was filed on October 21, 2024, at approximately 6:54 p.m. [Dk. 469]. The Court entered
27 its order denying the Motion on October 22, 2024. The denial of Debtor's Motion for the failure to comply
28 with the local rules, over which the Court has broad discretion and authority to enforce, remains
applicable. *Roskoski v. Brooks*, 1992 U.S. App. LEXIS 13544, at *2 (9th Cir. June 4, 1992); *Curtis v. BCI
Coca-Cola Enters. Bottling Cos.*, 2014 U.S. Dist. LEXIS 124447, at *9 (E.D. Cal. Sep. 5, 2014).
Notwithstanding the procedural defect, as set forth herein, the Motion still fails substantively.

1 **IV. Discussion**

2 Debtor's Motion asserts that pursuant to § 522(f) she seeks to avoid the lien held
3 by "J-PAD, LLC; JEFFREY GOLDEN, Ch7 Trustee" ("J-PAD Lien") [Dk. 422, pg. 2,
4 ¶10]. The asserted lien is one that was obtained by Trustee after obtaining judgments
5 avoiding, recovering, and preserving liens in his favor in *Golden v. J-Sandcastle Co.*,
6 *LLC, et al.*, Adv. No. 8:23-ap-01064-SC.

7 Debtor has shown, as required, that she does have an interest in the homestead
8 property and is entitled to a homestead exemption. *In re Morgan*, 149 B.R. 147, 151
9 (9th Cir. BAP 1993); See Dk. 393 (Order by the Honorable Erithe Smith finding that
10 Debtor held a sufficient equitable interest in the Property to claim automatic homestead
11 exemption under Cal. Civ. Proc. Code § 704.720(a)). Trustee does not dispute Debtor's
12 entitlement to her homestead.

13 However, Debtor's exemption in the Property only comes from equity following
14 *consensual* liens, which here includes the J-Pad Lien. See Cal. Code Civ. P. § 703.010,
15 et seq. Exemptions may be claimed only against involuntary liens, such as judgments,
16 attachments, and execution liens, and then only if the procedures of section 522(f) are
17 followed. *Id.* Thus, the consensual liens on the Property come ahead of any allowed
18 amount of Debtor's homestead exemption. See *In re Roach*, 2019 Bankr. LEXIS 263
19 (B.A.P. 9th Cir. 2019); see also *In re Bunn Rodemann*, 491 B.R. 132, 134-35 (Bankr.
20 E.D. Cal. 2013). Here, while Debtor may perceive the lien in favor of Trustee as
21 involuntary and/or judicial, the underlying lien (which has been avoided, recovered and
22 preserved for the benefit of the Estate and is now being asserted by Trustee) is
23 consensual and may not be avoided.

24 On June 30, 2023, Trustee commenced an adversary proceeding (8:23-ap-
25 01064-SC), by filing a Complaint: (1) to Avoid and Recover Fraudulent Transfers; (2) to
26 Avoid and Recover Postpetition Transfers; (3) for Declaratory Relief; (4) for Breach of
27 Contract; (5) for Money Had and Received; and (6) Unjust Enrichment against Ronald J.

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1 Pierpont, J-Pad LLC, J-Sandcastle Co., LLC, Steven D. Gallian, Brian J. Gallian, Justin
2 Barclay, Robert J. McLelland, and E. J. Gallian ("Avoidance Action").

3 Through the Avoidance Action, Trustee, *inter alia*, obtained a default judgment
4 against defendant J-Pad, LLC ("J-Pad") which avoided J-Pad's lien on the Property in
5 the amount of \$225,000 as well as other liens on the Property in favor of J-Pad. [See
6 Adv Dk. 79]. The judgment also preserved those liens for the benefit of Debtor's
7 bankruptcy Estate pursuant to 11 U.S.C. § 551³. "Upon avoidance of a lien or
8 fraudulent transfer, under § 551 the trustee 'steps into the shoes' of the former
9 lienholder or transferor and enjoys the same rights in the property that the original
10 lienholder or transferor enjoyed. *Giovanazzi v. Schuette (In re Lebbos)*, 2012 Bankr.
11 LEXIS 5962, at *42 (B.A.P. 9th Cir. Dec. 31, 2012) (citing *Morris v. St. John Nat'l Bank*
12 *(In re Haberman)*, 516 F.3d 1207, 1210 (10th Cir. 2008)).

13 As Trustee steps into the shoes of the former lienholder, Trustee enjoys the
14 same rights in the property that the original lienholder held. *Id.* As the J-PAD Lien
15 avoided by Trustee was a consensual lien, it cannot now be avoided under § 522(f) by
16 Debtor. *Polk v. Cty. of Contra Costa*, at *21.

17 Additionally, Debtor cannot show that the lien she seeks to avoid impairs her
18 homestead. California law provides that consensual liens must be paid ahead of
19 homestead exemptions. *Babae v. Marshack (In re Babae)*, 2023 U.S. App. LEXIS
20 24253, at *3 (9th Cir. 2023); See Cal. Civ. Proc. Code § 704.850; see also *Amin v.*
21 *Khazindar*, 112 Cal. App. 4th 582, 588 (Cal. 2003) (finding that homestead exemption
22 has no effect on liens created voluntarily by property owners, nor does it have any effect
23 on the claims of creditors secured by liens with priority). As noted *supra*, the lien Debtor
24 seeks to avoid is consensual and therefore possesses priority over her asserted
25 homestead exemption and cannot be said to impair her homestead exemption.

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³ No appeal was taken, and the judgment is final.

V. Conclusion

Accordingly, Debtor's Motion is DENIED for failure to timely schedule and give notice of a hearing and for the foregoing reasons. Further, the hearing set for November 5, 2024, at 11:00 a.m. is hereby VACATED.

IT IS SO ORDERED.

Date: October 29, 2024


Scott C. Clarkson
United States Bankruptcy Judge

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
870 Roosevelt, Irvine, CA 92620.

A true and correct copy of the foregoing document entitled: **JOINDER IN SUPPORT OF CHAPTER 7 TRUSTEE'S NOTICE OF MOTION AND MOTION FOR ORDER COMPELLING DEBTOR AND ANY OTHER OCCUPANTS TO VACATE AND TURN OVER MANUFACTURED HOME AND AUTHORIZING ISSUANCE OF WRIT OF**

ASSISTANCE will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 13, 2025**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On **February 13, 2025**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

DEBTOR

JAMIE LYNN GALLIAN
16222 MONTEREY LN UNIT 376
HUNTINGTON BEACH, CA 92649

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 13, 2025**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA PERSONAL DELIVERY:

PRESIDING JUDGE'S COPY

HONORABLE SCOTT C. CLARKSON
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
411 WEST FOURTH STREET, SUITE 5130 /
COURTROOM 5C
SANTA ANA, CA 92701-4593

VIA EMAIL:

DEBTOR

JAMIE LYNN GALLIAN
jamiegallian@gmail.com

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 13, 2025 Layla Buchanan

Date

Printed Name

/s/ Layla Buchanan

Signature

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** CONTINUED:

- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO. and CREDITOR HOUSER BROS. CO. DBA RANCHO DEL REY MOBILE HOME ESTATES:** Bradford Barnhardt bbarnhardt@marshackhays.com, bbarnhardt@ecf.courtdrive.com, kfrederick@ecf.courtdrive.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO. and CREDITOR HOUSER BROS. CO. DBA RANCHO DEL REY MOBILE HOME ESTATES:** Aaron E DE Leest adeleest@DanningGill.com, danninggill@gmail.com; adeleest@ecf.inforuptcy.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF THE HUNTINGTON BEACH GABLES HOMEOWNERS' ASSOCIATION:** Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com; goeforecf@gmail.com
- **CHAPTER 7 TRUSTEE JEFFREY I GOLDEN (TR):** Jeffrey I Golden (TR lwerner@wgllp.com, jig@trustesolutions.net; kadele@wgllp.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO. and CREDITOR HOUSER BROS. CO. DBA RANCHO DEL REY MOBILE HOME ESTATES:** D Edward Hays ehays@marshackhays.com, ehays@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com; cmendoza@marshackhays.com; cmendoza@ecf.courtdrive.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF THE HUNTINGTON BEACH GABLES HOMEOWNERS' ASSOCIATION:** Brandon J Iskander biskander@goeforlaw.com, kmurphy@goeforlaw.com
- **ATTORNEY FOR TRUSTEE JEFFREY I GOLDEN (TR):** Eric P Israel eisrael@DanningGill.com, danninggill@gmail.com; eisrael@ecf.inforuptcy.com
- **INTERESTED PARTY COURTESY NEF: Shantal Malmed** shantal.malmed@gmlaw.com, cheryl.caldwell@gmlaw.com
- **INTERESTED PARTY COURTESY NEF: Shantal Malmed** , cheryl.caldwell@gmlaw.com
- **ATTORNEY FOR CREDITOR AND PLAINTIFF HOUSER BROS. CO. and CREDITOR HOUSER BROS. CO. DBA RANCHO DEL REY MOBILE HOME ESTATES:** Laila Masud lmasud@marshackhays.com, lmasud@ecf.courtdrive.com; kfrederick@ecf.courtdrive.com
- **ATTORNEY FOR DEFENDANT RANDALL L NICKEL:** Mark A Mellor mail@mellorlawfirm.com, mellormr79158@notify.bestcase.com
- **INTERESTED PARTY COURTESY NEF:** Valerie Smith claims@recoverycorp.com
- **U.S. TRUSTEE:** United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov

4903-7392-5900, v. 1